

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

United States Courts
Southern District of Texas
FILED
FEB 04 2005
Michael N. Milby, Clerk of Court

SONYA R. BEASLEY,
Plaintiff,

VS.

UNION PACIFIC RAILROAD COMPANY,
KWANZA TRANSPORTATION, and
CHARLES V. MUHIA,
Defendants.

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§
§

C.A. _____

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW SONYA R. BEASLEY, Plaintiff, complaining of UNION PACIFIC RAILROAD COMPANY, KWANZA TRANSPORTATION, and CHARLES V. MUHIA, hereinafter referred to as Defendants, and for cause of action would show unto this Honorable Court, as follows:

PARTIES

I.

Plaintiff is a railroad worker and a resident and citizen of the State of Texas. On or about October 13, 2004, Plaintiff was involved in a Locomotive/Vehicle collision. Plaintiff suffered an injury in the occurrence. The collision and resulting injuries were legally caused by other parties.

II.

Defendant UNION PACIFIC RAILROAD COMPANY, (hereafter UPRR), is a foreign railroad company and was a common carrier by railroad engaged in interstate commerce through and between the several states, and Plaintiff was employed by Defendant UPRR to further those activities. The injuries complained of in this Complaint were sustained within the course of

that employment. Service of process may be had upon Defendant UPRR by serving David P. Young, Union Pacific Law Department, 808 Travis, Suite 620, Houston, Texas, 77002.

III.

Defendant KWANZA TRANSPORTATION, (hereafter KWANZA) is a resident corporation and doing business in the State of Texas and the Southern District of Texas. Service of process may be had upon Defendant KWANZA, at 1815 Old Mill #1905, Arlington, Texas, 76011.

IV.

Defendant CHARLES MUHIA, (hereafter MUHIA), is an individual residing in the State of Texas and doing business in the Southern District of Texas. Service of process may be had upon Defendant MUHIA at 4001 Mulberry, Garland, Texas, 75043.

JURISDICTION

V.

Plaintiff's rights and remedies arise under the Federal Employers' Liability Act (FELA), 45 U.S.C. §51 et seq., and the jurisdiction of this Court is invoked under provisions of said Act.

VI.

The claim of Plaintiff against KWANZA and MUHIA is so related to Plaintiff's claim against Defendant UPRR for the incident of October 13, 2004 that it forms part of the same case or controversy. As such, this Honorable Court has jurisdiction pursuant to 28 U.S.C. §1367(a).

VENUE

VII.

Venue is proper in this matter pursuant to the terms of Title 28 U.S.C. §1391(b) in that the cause of action arose within the Southern District of Texas.

**UNION PACIFIC RAILROAD - FELA NEGLIGENCE
VIII.**

The injury to Plaintiff was due in whole or in part to the negligence of Defendant, UPRR, its agents, servants or employees acting in the course and scope of their employment.

**KWANZA TRANSPORTATION TRUCKING COMPANY -
NEGLIGENT ENTRUSTMENT/NEGLIGENCE
IX.**

Defendant KWANZA, acting by and through its agent, servant or employee, Defendant MUHIA, negligently operated the vehicle which was involved in the collision. In the alternative, Defendant KWANZA negligently entrusted the vehicle in question to Defendant MUHIA. The negligence in question of KWANZA, singularly, in combination, or in the alternative was a proximate cause of Plaintiff's injury.

**CHARLES MUHIA - NEGLIGENCE
X**

Defendant MUHIA is an individual resident of the state of Texas. Defendant MUHIA was the driver of the vehicle which was involved in the occurrence in question. The negligence of MUHIA was a proximate cause of the injuries and damages which Plaintiff herein claims.

**DAMAGES
XI.**

As a result of the occurrence of October 13, 2004, Plaintiff has suffered damages as enumerated in Paragraphs XII., XIII., XIV., and XV.

XII.

Plaintiff suffered an injury to her neck, back, shoulder, right arm and other parts of her body. These injuries are permanent in nature. In all reasonable probability she will continue to suffer in this manner for a long time into the future, if not for the balance of her natural life. Plaintiff would

show that due to the incidents described above she has suffered permanent physical impairment and a loss of life's pleasures.

XIII.

Because of the nature and the consequences of her injuries, Plaintiff has suffered great physical and mental pain, suffering, and anguish and in all reasonable probability she will continue to suffer in this manner the balance of her natural life.

At the time of the incident complained of, Plaintiff was gainfully employed as a railroad worker. As a result of the negligence of the Defendants, Plaintiff is unable to return to her occupation. Plaintiff has lost wages in the past and will suffer a loss of future earning capacity including wages and benefits.

As a further result thereof, Plaintiff has incurred expenses for medical care and attention, such as physician's fees, medical supplies, appliances, medicine, hospitalization and nursing services. These expenses were incurred for necessary care and treatment of the injuries resulting from the incidents complained of. The charges are reasonable and they were the customary charges made for such services in the area in which they were rendered.

As a further result of the injuries sustained by Plaintiff, there is a reasonable probability that she will incur future expenses for her medical care and attention.

PUNITIVE DAMAGES - KWANZA TRANSPORTATION TRUCKING COMPANY

XIV.

Defendant KWANZA failed to adequately screen, hire, retain, train, instruct, warn and monitor its driver. Defendant is grossly negligent in that its conduct is the product of a conscious disregard for the health and safety of the Plaintiff and others similarly situated. Plaintiff, therefore, seeks punitive damages from Defendant KWANZA.

**PUNITIVE DAMAGES - TRUCK DRIVER
XV.**

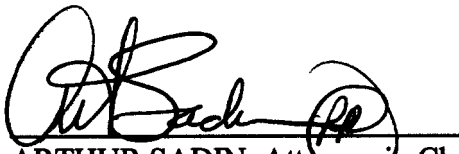
Defendant MUHIA was grossly negligent in that his conduct was a product of a conscious disregard for the health and safety of Plaintiff and others similarly situated. Plaintiff, therefore, seeks punitive damages from Defendant MUHIA.

WHEREFORE, Plaintiff requests that Defendants be summoned to appear and answer, and that on final trial, Plaintiff have:

1. Judgment against Defendants, jointly and severally, for a sum well in excess of Seventy-Five Thousand Dollars, exclusive of costs and interest;
2. Post-judgment interest at the legal rate against all Defendants;
3. Pre-judgment interest against Defendants KWANZA TRANSPORTATION and CHARLES MUHIA;
4. Punitive damages against Defendants KWANZA TRANSPORTATION and CHARLES MUHIA;
5. Costs of suit; and
6. Such other and further relief, both at law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,

PROVOST★UMPHREY, L.L.P.


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ATTORNEYS FOR PLAINTIFF

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Sonya R. Beasley

(b) County of Residence of First Listed Plaintiff Harris
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Art Sadin, Attorney in Charge
Provost Umphrey, L.L.P.
1560 West Bay Area Blvd., Suite 355
Friendswood, TX 77546
Ph: 281-992-1550 Fax: 281-461-7754

DEFENDANTS

Union Pacific Railroad Company
Kwanza Transportation
Charles V. Muhia

County of Residence of First Listed Galveston
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

United States Courts
Southern District of Texas
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- Citizen of This State ☐ 1 ☐ 1 DEF Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4 DEF
- Citizen of Another State ☐ 2 ☐ 2 DEF Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 DEF Foreign Nation ☐ 6 ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input checked="" type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Federal Employer's Liability Act (FELA), 45 U.S.C. Sec. 51 et seq. Plaintiff sustained injuries on or about October 13, 2004 as a result of a Locomotive/Vehicle collision, while employed by UPRR

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \$1 million

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/4/05

SIGNATURE OF ATTORNEY OF RECORD

Art Sadin / Phyllis Rogers

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____